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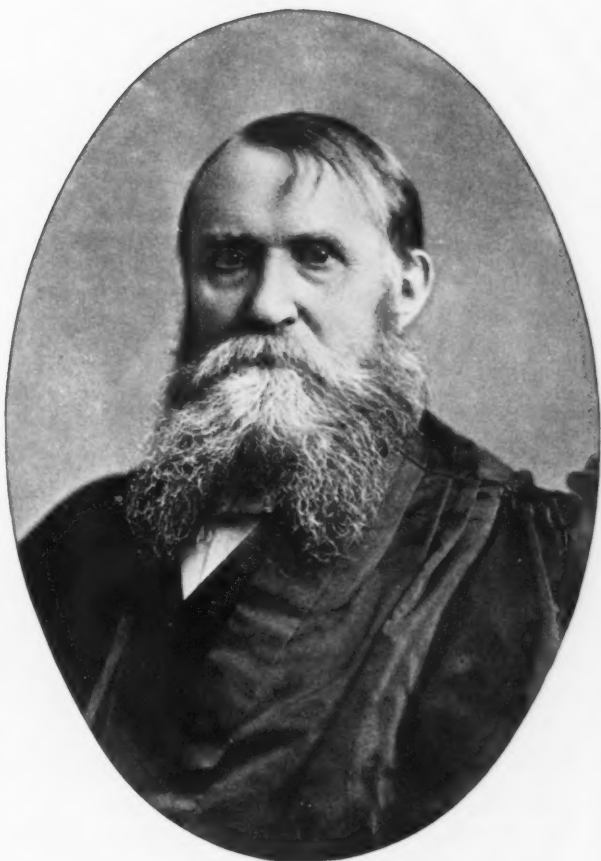
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Case and Comment

NOTES OF

RECENT IMPORTANT, INTERESTING DECISIONS

INDEX TO ANNOTATION OF THE LAWYERS' REPORTS, ANNOTATED

LEGAL NEWS NOTES AND FACETIÆ

VOL. 4

MAY, 1898.

No. 12

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Henry C. Caldwell.

For more than a third of a century Henry Clay Caldwell has been one of the judges of the United States courts.

In Marshall county, Virginia, he was born on September 4, 1832. His father removed in 1836 to the territory of Iowa, where Henry grew to manhood. He attended the common schools in that county, and studied law with Wright & Knapp, a firm of distinguished lawyers in Keosauqua, Iowa. He was admitted to practice law in his twentieth year and became a member of that firm. He was elected prosecuting attorney and afterwards elected to the legislature, in which he was made chairman of the judiciary committee of the House. In the Civil War he became successively major, lieutenant colonel, and colonel of the Third Iowa Volunteer Cavalry. He was in the volunteer service from the beginning of the war until June 4, 1864, when President Lincoln took him from his regiment to make him United States district judge for the district of Arkansas.

The conditions in Arkansas at that time, with the Civil War still unfinished, were such as to require rare qualities of bravery, firmness, and discretion, as well as legal learning, in the man who should occupy the bench of the Federal court in that state. His success

in that position demonstrated the sagacity of the President's choice. As a representative of the government against which the people of the state had been recently fighting, his career was such that, in the words of the "American Law Review," "he has long been held in great respect by men of all parties."

After a long and honored service as district judge, he was appointed in 1890 to be judge of the United States circuit court for the eighth circuit, which is one of the circuits of magnificent distances, extending from Arkansas north to Minnesota, and west to Wyoming.

Some prominent characteristics of Judge Caldwell are strength of statement, vigor of thought, and love of substantial justice. He is described by the most competent authority as "one of those judges, of which there are too few, who know the use and abuse of what is called technicality," and who have not only learning but "penetrating common sense."

Since the Day of King Alfred.

A thousand years of English law. Since the morning stars sang together no other nation has ever had so noble a record of law and justice as that of England from Alfred to Victoria. The coming celebration of the millenary of King Alfred ought to touch the imagination and stimulate the pride of the entire English-speaking race. English language and English law have gone together round the globe, and are to-day a heritage no less precious in America and Australia than in the British Isles. The growth of English law is a large chapter of the history of civilization. In the language of the "London Law Journal:" "What a gulf separates the law of to-day from the rude England of the great King. . . . But striking as is the contrast between the

England of Alfred and the England of to-day, not less striking is the continuity which links them together. Whenever a jury of to-day gives damages for a tort, it is but enforcing in a somewhat altered form the primitive *lex talionis*, or principles of 'bot' and 'wer' and the sacred obligation of the King's Peace" as they prevailed in his day.

Far as we are yet from ideal justice, the thousand years of English law since King Alfred are full of the prophecy of continued progress.

The Quality That Wins.

The masterful self-control of the American people has been an object lesson to the world in recent weeks. Vociferous men of the Spanish type, moved by passion more than reason, and desiring revenge more than right, have not been unknown among us. But after all, the great heart of the nation, indignant at wrong and regardful of the wronged, has not been captured by hate, but has been controlled by conscience and reason. No perils that can threaten need alarm us if we meet them in this temper. "Popular self mastery" is the theme of a fine and strong address lately delivered before the Wisconsin Bar Association by Judge P. S. Grosscup, of Chicago. (American Lawyer for March.) He says: "The unsolved problem always is, I repeat, not in the problem itself, but in what temper the American people will go about its solution."

Vicious Reformers.

The hatefulness of the word "reform" to many people is due in no small part to the vicious temper and Pharisaical attitude of some reformers. Opinions which differ from their own they promptly attribute to cowardice or moral delinquency. Yet they themselves are viciously immoral in their disregard of fairness and justice. To stir passion is their method. Denunciation is their favorite weapon; and in the fervor of denouncing others they seem to feel a luscious consciousness of their own superior virtue. The very choicest specimens of distorted truth, hateful injustice, passionate vituperation, despicable meanness of imputation, and venomous malignity of abuse that are known to recent American life, are not in the "yellow journals" nor from the mouths of ward "heelers," but from the pens and lips of "reformers," some of whom are clergymen.

The "Legalized" Liquor Traffic.

The theory that traffic in intoxicating liquors was illegal until made lawful by statute is so utterly baseless that it seems strange to hear it persistently asserted by men who assume the function of public teachers. To support this theory, which absolutely contradicts all judicial decisions on the subject, they cite a general proposition to the effect that men have "no inherent right" to sell intoxicating liquors, and then they distort this into a denial of the legality of such sales until they were "legalized" by statute. Rights which are not "inherent," but the exercise of which the legislature can regulate, are many. They include the right to sell oleomargarine, skimmed milk, gunpowder, cigarettes, drugs, and the countless other things which are within the range of the state's police power. The assumption that a denial of an inherent right to sell any of these things amounts to saying that its sale was unlawful until legalized by statute is a naked fallacy. Its falsity is conclusively demonstrated by the fact that the very decision in which this denial of an inherent right to sell intoxicating liquors is made, establishes the sovereign power of the state to restrain or regulate such business to the extent and in the manner that the legislature may deem best, declaring that it may impose conditions upon the pursuit of "any lawful trade or business." *Crowley v. Christensen*, 137 U. S. 86, 34 L. ed. 620. It takes some charity to suppose that an intelligent man can honestly quote this decision in support of the proposition that the liquor traffic has been "legalized" by statute.

Another argument, the fallacy of which is equally evident, is this: That the traffic in intoxicating liquors is injurious to public morals, and that the legislature cannot barter away the public morals, citing *Stone v. Mississippi*, 101 U. S. 814, 25 L. ed. 1079. This case does decide that the legislature cannot barter away the public morals. But what does that mean? Does it mean that the legislature has not the right to say what should be done in the interests of public morals? On the contrary, that right is unmistakably recognized. The exact point of the decision was that a contract by the legislature could not restrict the police power. It held that a lottery franchise was "nothing more than a license," "subject to future legislative and constitutional control or withdrawal," but good while it continued. The right to grant the permit was as plainly recog-

nized as the right to withdraw it. To quote this decision as an authority for the proposition that the legislature has no discretion in respect to the extent and kind of conditions that it may impose upon the liquor traffic is to falsify it completely.

The bitterness, intolerance, and virulence of some ultra temperance leaders, by which they sadly damage their cause, are largely due to their demonstrably false theory that the sale of intoxicating liquors was unlawful until "legalized" by statute. Candor, intelligence, and some diligence to know the truth of what they say, are not too much to expect of those who profess to teach public righteousness. Many intelligent men have taken the theory from others without investigation, but, however blameless they may be, it cannot be that the permanent triumph of any temperance movement will be won on a platform that is fundamentally false.

A Lawyer's Success.

In contrast with famous lawyers, who are described as caring more for victory than for justice, and who at the height of success wished they had chosen a different profession, Prof. George E. Gardner, in a recent law-school address at the University of Illinois, mentioned Senator Hoar as saying that the proudest title a man can bear is that of lawyer. The reason for his (Senator Hoar's) higher respect for his profession is attributed to the fact that he "when at the bar cared much for justice, and was not the friend of criminals nor the tool of corporations." Prof. Gardner adds: "I recall, as another type, a country lawyer who died recently in the fullness of years in a hill town of Massachusetts, where he had practised for nearly fifty years. He never held public office of any kind; he gained no wealth,—I doubt if he ever earned \$1,800 in a year,—and he was unknown outside his immediate community. But for half a century he had been the trusted counsellor of that people. He had advised them wisely in their little financial affairs, so big with significance to those farmers of the hills. He had drawn their wills, made their deeds, healed family quarrels, settled disputes between neighbors, encouraged peace, and denounced strife. He became a necessity to that people, and his memory will be cherished among them. I do not think that this attorney ever sneered at his profession or wanted

to write Greek history or to identify himself with journalism. He was doing something every bit as good."

Winning cases by bulldozing and trickery, increasing business by encouraging needless litigation, and accumulating wealth by extortionate charges to clients, may constitute one kind of success. A reputation for integrity, the esteem and honor of their fellow citizens, and the consciousness of being not harmful, nor merely worthless, but valuable to the community, constitute another kind of success, and many lawyers earn it.

Chinese Americans.

The American citizenship of a man of Chinese blood whose parents are subjects of the Emperor of China, but who is born in this country while they are domiciled here for purposes of private business and are not employed in any diplomatic or official capacity, is finally settled by the Supreme Court of the United States in the case of *United States v. Wong Kim Ark* (Advance Sheets, p. 512). Since the Constitution (14th Amendment) provides that "all persons born or naturalized in the United States and subject to the jurisdiction are citizens of the United States," the only question is whether such an American-born child of Chinese parents is "subject to the jurisdiction" of the United States. Chief Justice Fuller and Mr. Justice Harlan, who dissent, contend that these words mean "completely subject to that jurisdiction, that is, as completely as citizens of the United States," and that the children of persons who are excluded from naturalization are "not born so subject to the jurisdiction as to become citizens." But this puts something of a strain on the words "subject to the jurisdiction." In their ordinary meaning they include all residents of this country who are subject to our laws and to the jurisdiction of our courts, whether they are entitled to become citizens or not. It does not seem permissible to interpolate an exception into the Constitution so as to give citizenship to those "born . . . subject to the jurisdiction" only in case they are born of parents who can be naturalized. The fact that China may claim the allegiance of such Chinese Americans may involve some possible conflicts of authority, but, however that may be, under our Constitution they are American citizens.

Equitable Jurisdiction of Jury in Criminal Cases.

An ingenious theory was propounded by Colonel C. C. Pope in a paper on "Equity in Criminal Law," read before the Wisconsin Bar Association. He contends that a jury in a criminal case has not only the power, but the right, to disregard the law, if they deem it unjust. The chief arguments for this are that an acquittal is made final by the constitutional provision against putting an accused person twice in jeopardy, which he calls a "recognition of equity in criminal cases," and that from time immemorial people have acquiesced in acquittals even if they were contrary to law. Just how the constitutional guaranty against second jeopardy makes a "recognition of equity" in criminal cases does not appear. Could we not with equal reason call it a recognition of inequity in the criminal law? The Constitution does not seem to give any more conclusive effect to an acquittal based on equity than to one which utterly defies equity as well as justice. Or how a long acquiescence or immemorial recognition establishes this alleged equitable jurisdiction does not appear. Acquiescence legalizes only when interference is possible. But the Constitution has made it impossible to repudiate a verdict of acquittal. The possibility that jurors may violate their oaths and act from prejudice, passion, or corruption, instead of performing their duty, is, of course, inherent in the system that makes their acquittal final; but the makers of the Constitution have deemed this less dangerous than the possibility of oppression by repeated prosecutions under the opposite system. To read into the constitutional provision or the usage under it a recognition of the right of the jury to disobey their oaths or to disregard the law seems quite unjustifiable, although Colonel Pope presented the subject ingeniously and eloquently.

Gold Clause in Contracts.

The validity of a contract calling for payment in gold coin has long been established as fully as the most explicit decisions of the United States Supreme Court can establish anything. This is abundantly shown by the decisions collated in the note to *Skinner v. Santa Rosa* (Cal.) 29 L. R. A. 512. A statute making it unlawful to require payment in any specified kind of money is mentioned in that

note, but no adjudication had then been rendered upon it. Now such a statute is held unconstitutional in the case of *Dennis v. Moses*, — L. R. A. —, 52 Pac. —.

An auction purchaser of premises "subject to a mortgage for \$16,000" was required, in *Blanck v. Sadlier*, 153 N. Y. 551, — L. R. A. —, to accept the premises subject to a mortgage for that sum payable "in gold coin." The decision is that the gold clause, concerning which the parties had been silent, was not material in this case, as it could impose no burden except in "the contingency that the United States government would violate its plighted faith and within the three years in which the mortgage has to run refuse to redeem its obligations in gold." This the court regards as a possibility quite too remote to be "supposed to have been a material circumstance entering into the substance of the transaction or an efficient element in inducing the contract." Terms of sale stating a specified encumbrance are plainly intended to state that this is the limit or extent of the encumbrance. The question is whether a mortgage with a clause for payment in gold coin is a greater encumbrance than if it did not have that clause. That it would be so if gold was at a premium, or likely to become so, seems undeniable. The present decision does not necessarily hold that under such circumstances the unmentioned gold clause might not be a material addition to the terms of sale which the purchaser could not be compelled to accept.

Index to Notes

IN

LAWYERS' REPORTS, ANNOTATED.

Book 39, Parts 2 and 3.

Mentioning only complete notes therein contained, without including mere reference notes to earlier annotations.

- Bills and Notes;** fictitious names as affecting validity of 423
Contracts; capacity to make, see INCOMPETENT PERSONS.
 Fictitious names in, see NAME.
 Effect of statute of frauds upon contracts between sureties to fix their shares of liability 378
Criminal Law; morphinism as affecting responsibility 262
Deeds; fictitious names as affecting validity of 423
Drunkenness. See WILLS.

Evidence; expert opinions as to sanity or insanity:—(I.) Admissibility; generally; (II.) privilege of witnesses: (a) effect on opinions; generally; (b) waiver of privilege; (III.) from observation or examination; (IV.) from the evidence: (a) the general rule; (b) the contrary rule; (V.) on hypothetical statements or questions: (a) admissibility; (b) hypothesis; upon what based; (c) evidence in support of hypothesis; (d) form of question; (VI.) qualifications of experts; (VII.) basis of facts or reasons for opinion; (VIII.) scope: (a) general considerations; (b) symptoms and causes; (c) comparison; illustration; speculation; (d) questions of law for the court; (e) questions of fact for the jury; (f) the question at issue; (IX.) cross-examination; contradiction; redirect examination; (X.) weight: (a) generally; (b) as affected by facts and opportunity to observe; (c) as affected by character, bias, and nature of the question; (d) as compared with other expert opinions; (e) as compared with nonexpert opinions; (f) a question for the jury 305

Experts; opinions as to insanity 305

Husband and Wife; morphinism as ground for divorce 264

Incompetent Persons. See also **WILLS.**
Evidence as to sanity, see **EVIDENCE.**
Morphinism and other addictions as affecting responsibility and capacity:—(I.) Scope and general view of the subject; (II.) effect on criminal responsibility; (III.) effect on capacity to contract; (IV.) effect on testamentary capacity; (V.) as a ground for divorce; (VI.) as affecting insurance; (VII.) as affecting competency of witness 262

Insurance; morphinism of insured as affecting policy 265

Intoxication. See **WILLS.**

License; of pilots 183

Morphinism; as affecting responsibility and capacity of person 262

Mortgages; fictitious names as affecting validity of 423

Name; use of fictitious name as affecting validity of instrument:—(I.) Of contractors, grantors, and mortgagors; (II.) of grantees, patentees, mortgagees, and transferees; (III.) of makers and drawers of negotiable paper; (IV.) of payees: (a) in promissory notes; (b) in bills of exchange, checks, and drafts 423

Pilots; liability of vessel or owner for compulsory pilotage fees:—(I.) What constitutes compulsory pilotage; (II.) consideration and construction of provisions for: (a) generally; (b) exemptions; (III.) effect of constitutional restrictions; (IV.) effect of national prohibition against discrimination; (V.) effect of national provision for waters between states; (VI.) effect of Federal licenses and license laws; (VII.) conditions of liability: (a) necessary qualifications of pilot; (b) tender of services; (c) refusal of services tendered; (d) first pilot offering; (e) proper destination; (VIII.)

outward-bound pilotage; (IX.) to whom and what the liability attaches; (X.) the amount or rate 177

Principal and Surety; statute of frauds as to contract between sureties 373

Shipping. See **PILOTS.**

Wills; drunkenness as affecting testamentary capacity:—(I.) Present intoxication; (II.) habits of intoxication; (III.) drunkenness as evidence of incapacity: (a) generally; (b) in connection with conduct and condition; (c) in connection with nature of the act; (d) in connection with undue influence; (e) point of time under investigation; (f) presumption and burden of proof; (IV.) inquisition of drunkenness as evidence 230

Effect of morphinism on testamentary capacity 263

Witnesses; morphinism as affecting competency 265

Examination of, as to sanity or insanity 305

The part containing any note indexed will be sent with Case and Comment for one year for \$1.

Among the New Decisions.

Bonds.

The right of a city to make its bonds payable in gold coin only is sustained in *Murphy v. San Luis Obispo (Cal.)* 39 L. R. A. 444, under a statute authorizing them to be made "payable in gold coin or lawful money," as the statute is necessarily construed, taking all its provisions together, as giving the city the option to make them payable in gold coin alone or in lawful money.

Building and Loan Associations.

Notice of withdrawal from an insolvent loan association is held insufficient, in *Gibson v. Safety Homestead & L. Asso. (Ill.)* 39 L. R. A. 202, to give any priority over other stockholders.

Carriers.

A car labeled "powder," allowed to stand so near a warehouse as to deter the city fire department from attempting to extinguish a fire in the warehouse, is held, in *Hardman v. Montana Union R. Co. (C. C. App. 9th C.)* 39 L. R. A. 300, to constitute a ground of liability on the part of the railroad company for the loss of goods in the warehouse which would have been saved if the car had not been there, although there was in fact no powder in the car.

The bursting of a hog-head of molasses by reason of fermentation is held, in *Faucher v.*

Wilson (N. H.) 39 L. R. A. 431, to be a loss which a common carrier does not insure against, as it results from the operation of natural laws.

Commerce.

A contract with a ticket broker, enabling him to sell tickets at less than the schedule rates, is held, in *Raleigh & G. R. Co. v. Swanson* (Ga.) 39 L. R. A. 275, to be in violation of the act of Congress to regulate commerce, when the tickets are for interstate transportation, and the contract is therefore unenforceable and void.

A statute for the inspection of sheep brought from another state and requiring them to be dipped is held, in *State v. Duckworth* (Idaho) 39 L. R. A. 365, to be an unconstitutional burden upon interstate commerce by reason of discrimination against sheep imported.

Constitutional Law.

Discrimination in favor of nonresidents of a town or city by partial or entire exemption from penalties for allowing stock to run at large in the streets is held, in *Broadfoot v. Fayetteville* (N. C.) 39 L. R. A. 245, to be constitutional.

An ordinance making it unlawful to sell fresh pork or sausage made therefrom between June 1 and October is held, in *Helena v. Dwyer* (Ark.) 39 L. R. A. 266, to be unreasonable and void because it violates the inalienable right of men to procure food, since such food, when sound and free from disease, is useful and nutritious.

A statute reducing the power of a city to levy taxes for the payment of a judgment against it for a tort is held, in *Sherman v. Langham* (Tex.) 39 L. R. A. 258, to be valid and not a deprivation of the property of the judgment creditor without due process of law.

Contracts.

An agreement fixing the minimum price for harrows, made by the owner of a patent with a corporation organized by rival manufacturers to take title to the patents and license the former owners to operate under them and sell only at the prices fixed, is held, in *National Harrow Co. v. Hench* (C. C. App. 3d C.) 39 L. R. A. 299, to be an unlawful restraint of competition which is not justified by the patents.

A by-law of a live stock exchange limiting the number of solicitors that any member shall employ, with a provision for its enforcement by fine, suspension, or expulsion from membership, is held, in *People, McIlhany, v. Chicago Live Stock Exch.* (Ill.) 39 L. R. A. 373, to be an unlawful restriction on the freedom of trade and business.

A contract between cosureties fixing the proportion and extent of their several or correlative liability as between themselves is held, in *Rose v. Wollenberg* (Or.) 39 L. R. A. 378, to be outside the statute of frauds.

Corporations.

A corporation created in another state, attempting to do business in Florida without being incorporated under Florida laws, is held, in *Taylor v. Branham* (Fla.) 39 L. R. A. 362, to be an unincorporated partnership merely, as a corporation must dwell in the place of its creation and cannot migrate to another sovereignty.

The invalidity of a chattel mortgage which constitutes an unlawful preference by a corporation is held, in *Fowler v. Bell* (Tex.) 39 L. R. A. 254, to be a defense which can be set up by a person who has purchased the property under an invalid attachment.

Court-House.

The custody of a court-house which the sheriff, as the court's executive officer, has, is held, in *Dahnke v. People* (Ill.) 39 L. R. A. 197, to be the custody and care of the building as a court-house, while as real estate simply it is held to be in the care and custody of the county board, and the assignment of rooms therein to the different judges rests with the judges themselves, over which matter the county board has no authority.

Criminal Law.

Proof that a person arrested had upon her person and about her premises articles the possession of which tended to establish guilt, although they were discovered by forcibly entering the house and searching her person and premises, without any warrant or authority of law, is held admissible, in *Williams v. State* (Ga.) 39 L. R. A. 269, although the search and seizure may have been unlawful, unwarranted, unreasonable, and reprehensible.

Death.

The heirs to whom a right of action for death is given by the Colorado statute, if there be no husband or wife or any action by him or her within one year, are held, in *Hindry v. Holt* (Colo.) 39 L. R. A. 351, to be the children or lineal descendants of the deceased.

Deeds.

A deed to a fictitious grantee is held to convey no title in *Wiehl, P. & Co. v. Robertson* (Tenn.) 39 L. R. A. 423, but a trust deed executed in a fictitious name by the real owner of the property, employing his own Christian name as that of a fictitious person to whom he had previously pretended to convey the property, is held binding on him, where he intended it to take effect as security for bonds issued therewith and transferred by him as security for his own debt.

Dower.

The extinguishment by partition sale of the irchoate interest of the wife of a cotenant under Indiana statutes is held, in *Haggerty v. Wagner* (Ind.) 39 L. R. A. 384, to be effective notwithstanding she is not made a party and the statutes do not give this effect to a judicial sale in a suit to which she is not a party.

Electrical Uses and Appliances.

An inspection and test of the guy wires or circuit breakers of an electric-railroad company which uses the same poles that are used by a telephone company is held, in *Bergin v. Southern New England Teleph. Co.* (Conn.) 39 L. R. A. 192, to be properly required by the telephone company of a lineman, when he is furnished with suitable appliances for that purpose and knows that there are no other persons employed to do the testing.

Eminent Domain.

Damages by the grading of a street in front of one's premises, although no prior grade had been established, are held, in *Searle v. Lead* (S. D.) 39 L. R. A. 345, to be within the provision of the Constitution against taking or damaging property without just compensation, and the same is held in *Henderson v. McClain* (Ky.) 39 L. R. A. 349, in case of an abutting lot left 8 or 10 feet above the street by change of grade.

Evidence.

The hypothetical question for an expert as to the insanity of an accused person is held, in *Burt v. State* (Tex.) 39 L. R. A. 305, to be properly formulated by the state, embracing such facts as it deems proper and competent, and that if defendant is not satisfied he has the privilege of submitting his case, embracing any or all the testimony introduced on the trial.

False Imprisonment.

A police judge ordering the commitment of a person without any evidence or warrant except a telegram to the chief of police to arrest him, is held, in *Glazer v. Hubbard* (Ky.) 39 L. R. A. 210, to be guilty of false imprisonment, although his motives may not have been improper or corrupt.

Forcible Entry.

The forcible eviction of a person from a peaceable possession, lawfully obtained, by one who had the title and the right of possession, is held, in *Page v. Dwight* (Mass.) 39 L. R. A. 418, no ground of an action of forcible entry and detainer, where the statute authorizes this only by "the person entitled to the premises." So, the forcibly taking possession of premises by a landlord after expiration of a lease, if no excessive force is used, is held, in *Vinson v. Flynn* (Ark.) 39 L. R. A. 415, to give no right of action against him by the tenant. And the peaceable entry by a landlord during the temporary absence of a tenant in default is held, in *Smith v. Detroit Loan & B. Asso.* (Mich.) 39 L. R. A. 410, to give no right of action for forcible entry.

Husband and Wife.

Five years' imprisonment of a husband under sentence for life is held, in *Davis v. Davis* (Ky.) 39 L. R. A. 403, to be ground for a divorce to the wife, under a statute for divorce of parties living apart for five years, and also under a statute for divorce in case of condemnation for felony. The condemnation for felony is deemed to exist as long as it is in force, within a provision that the cause for divorce must exist within five years before action is brought.

Incompetent Persons.

One who makes an assault while insane from the recent voluntary use of cocaine, morphine, and whisky, is held, in *Edwards v. State* (Tex.) 39 L. R. A. 262, to be exempt from conviction, although voluntary intoxication is not a defense.

An order by a judge for the temporary confinement of a person alleged to be insane, pending proceedings to determine that question, is held, in *Porter v. Ritch* (Conn.) 39 L. R. A. 353, not to be a denial of due process of law but clearly within the police power of the state, when made on written complaint and affidavit to the fact of insanity, as it is merely to restrain a dangerous person in an emergency.

The right to an injunction against a pending action at law, notwithstanding a good legal defense to it by a valid release, is sustained, in *Bomeisler v. Forster* (N. Y.) 39 L. R. A. 240, on the ground that the remedy by defense at law is not adequate to protect the reputation and character of the defendant which is attacked by the complaint.

Innkeepers.

Samples of a traveling salesman belonging to his employer are held, in *Brown Shoe Co. v. Hunt* (Iowa) 39 L. R. A. 291, to be subject to a lien for the hotel bill of the salesman under a statute authorizing such lien on all property under the control of the guest, and this statute is held constitutional.

Insurance.

A combined harvester used by a man engaged in farming and grain raising, which he testifies is a necessary implement for his business, is held, in *Re Klemp* (Cal.) 39 L. R. A. 340, to be exempt from execution as a farming utensil or implement of husbandry, although he uses it also to harvest crops of his neighbors.

The necessity of notice and proofs of loss of insured property, notwithstanding the death of the insured, is held, in *Matthews v. American Cent. Ins. Co.* (N. Y.) 39 L. R. A. 433, to require the appointment of a temporary representative, if there is no one else who can take the required steps and the appointment of an executor or administrator cannot be secured with sufficient promptness.

Life insurance declared incontestable upon any ground whatever after the lapse of a limited period is held in *Manufacturers L. Ins. Co. v. Anclit*, 28 Can. S. C. 103, not binding upon the insurer if it is a mere wagering policy.

Landlord and Tenant.

Damages to a tenant by the landlord's improper management of the heating apparatus which the landlord controls is held, in *Railton v. Taylor* (R. I.) 39 L. R. A. 246, to make the landlord liable, although the lease stipulates that he shall not be liable for damage "by fire, water, or otherwise . . . or by the leakage or bursting of water pipes, or in any other way or manner."

The right to remove trade fixtures after a renewal of the lease which contains no reservation of such right is denied, in *Sanitary District v. Cook* (Ill.) 39 L. R. A. 369, although they were erected by the tenant during the original term.

The right of an assignee of a rent note to the remedy of distress is denied, in *Hutsell v. Deposit Bank* (Ky.) 39 L. R. A. 403, where the statute does not give the right, although it authorizes the assignment of the rent and its recovery by the assignee. See also *FORCIBLE ENTRY, supra*.

Life Tenants.

A decrease in the value of bonds by the lessening or wearing away of premium on account of the bonds reaching maturity is held, in *McLouth v. Sexton* (N. Y.) 39 L. R. A. 230, to be a loss, as between life tenants and remaindermen, or persons having equivalent relations to each other, to be borne by the *corpus* of the estate, where the bonds were transmitted by will to trustees, with a direction that the life tenants shall receive the full income.

Masses.

A bequest to the pastor of a specified church in order that "masses may be said" for the testator is sustained, in *Moran v. Moran* (Iowa) 39 L. R. A. 204, as a valid private trust for a known and lawful purpose, although it is not a charity.

Mines.

Possession adverse to the owner of minerals is held, in *Murray v. Allard* (Tenn.) 39 L. R.

A. 249, not to be held by one who uses the land merely for agricultural purposes.

An oil lease giving the right to remove all the oil in place in the premises in consideration of a certain per cent thereof given to the lessors is held, in *Wilson v. Hughes* (W. Va.) 39 L. R. A. 292, to be in legal effect a sale of a portion of the land which can be made on behalf of an infant owner only in the statutory mode provided for sales of infant's realty.

Municipal Corporations.

The right of the court to assign or transfer a town or city from one class to another is held, in *Jernigan v. Madisonville* (Ky.) 39 L. R. A. 214, to be denied by a constitutional provision giving such power to the general assembly without providing for its delegation.

A delegation to a board of the power to fix the amount of a tax for a public library which must be levied by the common council is held, in *State, Howe, v. Des Moines* (Iowa) 39 L. R. A. 285, to be beyond the authority of the legislature, unless the board is chosen by, and directly responsible to, the taxpayers, or unless the people assent thereto.

New Trial.

The inability of a juror to read or write the English language, which is not known to the defendant in a prosecution until after the trial, is held, in *State v. Pickett* (Iowa) 39 L. R. A. 302, to give no right to a new trial.

Parliamentary Law.

The right of the auditor to give a casting vote in case of a tie on a vote by township trustees to fill a vacancy in the office of a county superintendent is held, in *State, Morris, v. McFarland* (Ind.) 39 L. R. A. 282, to extend to a *caveat* vote on a motion or resolution which is preliminary to the appointment, and not to be limited to a tie vote by ballot.

Partition.

An agreement that land shall remain in common and not be partitioned is held, in *Crocker v. Cotting* (Mass.) 39 L. R. A. 215, not to be implied on the purchase in common of land subject to an easement already belonging to the purchaser.

Postoffice.

The postmaster of a local postoffice is held, in *Bishop v. State, Griner* (Ind.) 39 L. R. A. 278, to be a "deputy postmaster" within the constitutional provision that the office of deputy postmaster shall not be deemed lucrative so as to make the incumbent ineligible to hold other office.

Railroads.

A license to use a railroad track as a foot-path is held, in *Thomas v. Chicago, M. & St. P. R. Co.* (Iowa) 39 L. R. A. 399, to be shown by the use of it for a number of years to such an extent that visible paths were worn on the ground and the fact that a ladder had been placed from the highway to reach the road-bed, with the knowledge of the railroad employees, and without objection.

Depot grounds or yard limits which need not be fenced are held, in *Rabidon v. Chicago & W. M. R. Co.* (Mich.) 39 L. R. A. 405, to extend to a switch about a mile from a depot to which a switch engine runs frequently at irregular intervals without receiving orders as against other trains.

Receivers.

Judgment in Canada upon a contract made and performable in one of the United States between parties there domiciled is, in *Baker v. Central Vermont R. Co.* (Rap. Jud. Quebec, 13 C. S. 2), denied enforcement against property which has passed into Canada, where receivers have been appointed by the courts of the state, and this by the conditions and consequences of the contract under the laws of the state terminated the right of execution and sale of the property.

Sunday.

Keeping a saloon open on Monday, July 5, is held, in *People v. Thielman* (Mich.) 39 L. R. A. 218, to be prohibited by statutes requiring saloons to be closed on legal holidays, and also designating July 4 as a holiday, but when it falls on Sunday making the next Monday a holiday.

Taxes.

The proper basis for local taxation of a railroad under a system by which the franchise and personal property are assessable at

the principal office of the corporation is held, in *People, Delaware, L. & W. R. Co., v. Clapp* (N. Y.) 39 L. R. A. 237, to be the cost of reproduction of the road.

The collection of taxes on personal property not secured by lien on real property, at the time of making the assessment and before equalization or levy for the year, and before the beginning of the fiscal year to which they belong, is held, in *Rode v. Siebe* (Cal.) 39 L. R. A. 342, to be valid as against the objection that there is discrimination against personal property, since there is sufficient difference between secured and unsecured taxes to justify the difference in the procedure.

Trade Union Labels.

Voluntary unincorporated labor organizations composed solely of practical cigar makers are held, in *Hetterman Bros. v. Powers* (Ky.) 39 L. R. A. 211, to be entitled to the protection of a label adopted by them against use by an unauthorized person, although they do not own the cigars to which the label is affixed.

Waters.

Access by water to lands conveyed at the time of the conveyance is held in *Fitchett v. Mellow*, 29 Ont. Rep. 6, to prevent a way of necessity over other lands of the grantor, although the waters subsequently become so shallow as to prevent access or render it inconvenient.

Recent Articles in Law Journals and Reviews.

"The Power of the State to Regulate Prices and Charges."—6 *American Lawyer*, 125.

"Equity in Criminal Cases."—6 *American Lawyer*, 128.

"Should the Powers of the Courts Be Reduced and That of the Legislature be Enlarged?"—6 *American Lawyer*, 132.

"The Present Scope of Government."—6 *American Lawyer*, 133.

"A Very Bad Statute." (Succession Tax.)—37 *American Law Register*, N. S., 79.

"The Amount Which May Be Given by a Donor Mortis Causa."—37 *American Law Register*, N. S., 73.

"Limitations of Municipal Ownership in Pennsylvania." 37 *American Law Register*, N. S., 155.

"What Constitutes a Partnership?"—37 *American Law Register*, N. S., 137.

"Death by Wrongful Act; Personal Injury."—3 *Chicago Law Journal*, N. S., 149.

"Conversion of Mortgaged Chattels; Liabilities; Pleading."—46 *Central Law Journal*, 323.

"Pardons."—46 *Central Law Journal*, 320.

"The Referendum in California."—13 *Political Science Quarterly*, 1.

"The Power of Removal from Federal Offices."—10 *Green Bag*, 164.

"Extraordinary Wills."—10 *Green Bag*, 162.

"Some Morals for the Ken of the Judiciary." (Review of Verdict.)—10 *Green Bag*, 145.

"Suicide and the Law."—10 *Green Bag*, 141.

"Harbor Obstructions and Submarine Explosives."—10 *Green Bag*, 137.

"Deed of Trust on Store Fixtures and Stock of Goods."—3 *Virginia Law Register*, 849.

"Adversary Possession."—3 *Virginia Law Register*, 843.

"Excusable Breaches of Trust."—14 *Law Quarterly Review*, 159.

"Judicial Sentences, and the Habitual Criminal."—14 *Law Quarterly Review*, 154.

"The Shipowner's Lien for Freight."—14 *Law Quarterly Review*, 143.

"Legal Remainders and Perpetuities."—14 *Law Quarterly Review*, 133.

"Construction; Power to Mortgage Estate. Reformation of Mortgage."—46 *Central Law Journal*, 306.

"Has a Check Holder a Right of Action against a Bank for Refusal to Pay Same."—46 *Central Law Journal*, 302.

"Jurisdiction over Foreign Corporations."—12 *Harvard Law Review*, 1.

"The Element of Chance in Land Titles." I.—12 *Harvard Law Review*, 24.

"Contributory Infringement of Patent Rights."—12 *Harvard Law Review*, 35.

"Joinder of Claims under Alternate Ambiguities."—12 *Harvard Law Review*, 45.

"Executor's Right of Retainer."—18 *Canadian Law Times*, 73.

"The Liability of a Guarantor."—2 *Legal Counselor*, 141.

"The Right of the United States to Intervene in Cuba."—57 *Albany Law Journal*, 278.

"The Law and Practice of *Lis Pendens*."—57 *Albany Law Journal*, 288.

"Homicides by Peace Officers."—46 *Central Law Journal*, 339.

"Employer's Liability to Servant." (After Promise to Remove Danger.)—34 Canada Law Journal, 289.

"Status of a Married Woman at the Common Law."—4 Western Reserve Law Journal, 60.

"Recent Phases of Contract Law. IV. Performance to the Satisfaction of the Promisor."—46 Central Law Journal, 360.

"Malpractice; Dentist; Negligence; Damages."—46 Central Law Journal, 367.

New Books.

"Abbott's New Cases." Subscription Reprint Edition, 250 Sets Only. (Williamson Law Book Co., Rochester, N. Y.) 32 Vols. \$60. Bound in 16, \$45.

"The Law of Negotiable Instruments." By E. W. Huffcut. (Baker, Voorhis & Co., New York.) 1 Vol. Law Canvas, \$4. Sheep, \$4.50.

"An Introduction to the Study of Law." By Edwin H. Woodruff. (Baker, Voorhis & Co.) 1 Vol. \$1.

"Vessels and Voyages as Regulated by Federal Statutes and Treasury Instructions and Decisions." By Richard Wynkoop. (D. Van Nostrand, New York.) 1 Vol. \$2.

"New Annotated Wisconsin Statutes." (Callaghan & Co., Chicago, Ill.) 2 Vols. 1898. \$9.

"The Law of Private Corporations in Pennsylvania." By Albert B. Weimer. (T. & J. W. Johnson & Co., Philadelphia, Pa.) 2 Vols. \$12.

"The Law of Boroughs in Pennsylvania." By Wm. Trickett. (T. & J. W. Johnson & Co.) 2 Vols. \$10.

"A Tabular Analysis of the Law of Evidence." By A. G. Turnipseed. (W. H. Anderson & Co., Cincinnati.) 1 Vol. \$1.

"A Tabular Analysis of the Law of a Contract." By Jas. R. Jordan. (W. H. Anderson & Co.) 1 Vol. \$1.

Summary of Legislation.

To give a concise comparative view of current state legislation on all subjects, except those of purely local interest, is the expressed aim of the "Bulletin of Legislation," published by the New York State Library, of which Melvil Dewey is director. The eighth annual comparative summary and index, issued in February last, was prepared by E. Dana Durand, Ph. B., and George F. Bow-

erman, B. A. This series of bulletins of legislation is performing a service of unmistakable value, and is greatly to the credit of the New York State Library.

The Humorous Side.

POST MORTEM ALLEGATIONS.—A man's allegation of his own death and the cause thereof appears in a late case as follows: "— — — instituted this suit against appellant to recover damages, the petition alleging that, while in the employ of appellant in its mines at —, —, he was knocked down by slate which fell from the roof of the mines and received injuries from which he finally died, and which he says were caused by the gross negligence and carelessness of appellant."

DYING DECLARATIONS OF WITNESS ON THE STAND.—During the examination of a woman who had made affidavit of paternity shortly before the birth of a child and while she was in "fear of death" as she said, a prosecuting attorney in Washington state offered her affidavit in evidence "as the dying declaration of the witness on the stand."

NOAH ALSO STILL LIVES.—Among the authorities as to the meaning of a word, a late judicial opinion refers to "Mr. Webster, in his International Dictionary." It does not appear how Mr. Webster, after more than fifty years on the other side of the Styx, could have sent his copy for the International Dictionary to the printers, unless he sent it (*horribile dictu*) by the printer's youngest apprentice.

ENLIGHTENING THE JURY.—"Gentlemen of the jury," said the prosecutor in another Washington case, "we will show you that at 2:25 in the morning of the 30th day of October, A. D. 1897, the defendant got up from his bed, took a two-quart tin pail, and went to a saloon where he got it filled with beer, and this, gentlemen, we will show you by competent evidence is what is commonly known as 'rushing the groutler.'"

GOT THE TAG.—As a long freight train was running over a crossing at about 15 miles per hour, while 6 was the lawful speed, a dog named "Tag" attempted to scoot under near the middle of the train, but was unfortunately killed. The supreme court held that the jury should say whether the unlawful speed of the train was the cause of the casualty, and that the burden of disproving this was on the railroad company. The decision seems to imply that the dog was justified in assuming that the train would not go at an unlawful speed, and that he calculated his chances on that assumption. But one can rely too much on the maxim *Omnia rite acta*, especially in the case of a corporation.

Can you afford not to have the best?

Extract from a letter of D. A. McKnight, Atty.,
Washington, D. C.:

I have just had occasion to argue before the Secretary of the Interior a cause relating to the public lands of the United States, in which my contention was opposed directly by a statement in the opinion Par. 1 in L. L. & G. R. Co. v. U. S., 92 U. S. 733, official edition. By your edition I showed him that the opinion on file was radically different, as well as by my own examination of the records in the Clerk's Office. General Swayne (of Dillon & Swayne, N. Y. City) who was present, narrated an interesting incident (which he had from his father, the Justice) relative to changes by the official reporter, especially by Wallace. Whereupon the Secretary suggested that he ought to have a set of your reports. (He got them later.)

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